IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Criminal Contempt Petition No.25 of 2005

Ms.Daisy Behramji Damania — Applicant

Vs.

Balraj S. Chandanani & anr. — Respondents

Applicant in person.

Mr.V.G.Pradhan, Sr.Counsel with Mr.Parvathy Kaushik for resp.no.1.

Mr.Nitin Jamdar for Bar Council of India.

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

October 12, 2006.

ORAL ORDER (PER B.H.MARLAPALLE,J.)

1. The petitioner, a resident of Colaba, Mumbai has moved this contempt petition alleging that the respondent no.1 is guilty of contempt as defined under Section 2(b) and 2(c) of the Contempt of Courts Act, 1971 ("the Act" for short) and be punished accordingly. She had filed a complaint against the respondent with the Bar Council of Maharashtra and Goa and it came to be registered as Case No.100 of 1998, alleging professional misconduct on the part of the respondent. The said proceedings were

transferred to the Disciplinary Committee of the Bar Council of India (Transfer Case No.16 of 2001) and as per her the proceedings culminated in the order dated 17/10/2004 by which the name of the respondent was struck down from the Roll of Advocates for five years and was imposed a cost of Rs.15,000/- out of which Rs.10,000/- would be paid to the petitioner and the balance to the Bar Council of India's Advocates Welfare Fund. Inspite of this order having been passed the respondent appeared in the civil suits filed before the City Civil Court, Mumbai as well as this Court (on the Original Side) as an Advocate and, therefore, at the first instance he acted contrary to the order passed by the Bar Council and at the second instance he caused interference with due course of judicial proceedings and interfered with the administration of justice. As per the petitioner the respondent was not qualified or entitled to appear as an advocate after the said order was passed by the Bar Council of India and he deliberately suppressed the said order and appeared as an advocate, signed Consent Terms and filed Vakilpatra as well in more than one cases. She therefore, states that he scandalised the Court itself. The respondent had appeared and taken out Stay Petition No.46 of 2005

against the order passed by the Bar Council and on 23/9/2005 the following order was passed:

> "On going through the Application and order dated 17.10.04, the order dated 17.10.2004 is stayed subject to deposit of Rs.15,000/- before Bar Council of India and the same may be kept in Bar Council of India subject to the result of SLP. On this condition the order dated 17.10.2004 is stayed for 2 months from the date of this order."

. In Civil Appeal No.5772 of 2005 the order of sentence was suspended by the Supreme Court on 30/9/2005. Thus the order of the Disciplinary Committee of the Bar Council of India passed on 17/10/2004 was operative till 23/9/2005. In the intervening period the respondent appeared before this Court in Suit No.418 of 2005 on 24/8/2005, he also signed the Consent Terms as the Advocate for Defendant no.1 on 23/8/2005 and filed Vakilpatra on 10/3/2005. He also appeared in Summary Suit No.3402 of 2005 in the City Civil Court at Mumbai which was filed in April 2005 and the said suit was admitted on 27/8/2005.

2. A preliminary objection was taken regarding the maintainability of the petition on the ground that the Disciplinary Committee of the Bar Council of India established under the Advocates Act, 1961 is not a Court within the meaning of the Act and after hearing all the parties concerned by the order dated 21/7/2006 the said preliminary issue was decided against the respondent. This Court also noted that the Advocate General had already granted his consent to initiate proceedings for criminal contempt as required by Section 15 of the Act against the respondent and, therefore, the draft charges were taken on record. The charges were framed against the respondent by the order dated 11/8/2006 and thereafter he filed his reply. The following charges were framed against him:

> (1) That the Contemnor appeared in Court proceedings on 24th August, 2005 as an advocate; signed consent terms as advocate on 23rd August, 2005 and also filed vakalatnama in this Court in Suit No. 418 of 2005 on 10th March, 2005 despite the fact that the Disciplinary Committee of the Bar Council of

India vide its judgment dated 17th October, 2004 was of the view that his name be struck down from the roll of the advocate for five years.

(2) That the Contemnor filed Suit in the City Civil Court at Mumbai being Summary Suit No.3402 of 2005 which was admitted in the office on 27th August, 2005 much after the receipt of the order passed by the Disciplinary Committee, Bar Council of India deciding that his name be struck down from the roll of Advocate for five years and before any order of stay was obtained by him.

3. In his reply he admitted that the order dated 17/10/2004 was received by him on 3/8/2005 i.e. before he appeared on 24/8/2005 for filing Consent Terms in Suit No.418 of 2005. He further contended that Summary Suit No.3402 of 2005 was filed on 7/6/2005 i.e. before the order was received and that his conduct did not tantamount to criminal contempt within the meaning of Section 2(c) of the Act.

4. Section 45 of the Advocates Act, 1961 states that any person who practises in any court or before any authority or person, in or before whom he is not entitled to practise under the provisions of the Act, shall be punishable with imprisonment for a term which may extend to six months. The challenge to the order dated 17/10/2004 raised by the petitioner is pending before the Apex Court but certainly the said order was operative till 23/9/2005 and, therefore, he was not entitled to appear in any judicial or quasi judicial proceedings before any Court or authority at least from 3/8/2005 onwards. Thus he knew that his name was removed from the Roll of Advocates by the Bar Council and he was not entitled to appear as an advocate in any judicial or quasi judicial proceedings. His appearance before this Court (on Original Side) in Suit No.418 of 2005 including filing his authority has caused interference in the said proceedings and it ought to be noted that inspite of having full knowledge that he was not entitled to do so, he caused his appearance and signed the Consent Terms which resulted in this Court passing a Consent Order dated 24/8/2005. Undoubtedly he is guilty of contempt within the meaning of Section 2(c) of the Contempt of Courts Act, 1971.

5. No doubt he has tendered an unqualified apology and stated that the said apology is the sincerest. He also begs for being forgiven. This apology submitted towards the end of the affidavit-in-reply cannot be the basis to give him the benefit under the proviso to Section 12(1) of the Act and in any case he is not a layman. As an advocate unqualified or whose name was removed from the roll of advocates, he knew fully well that he was not qualified to appear representing the parties before the Court and this is not a mistake or a human aberration. The acts on the part of the respondent to cause his appearance in the Court proceedings after 3/8/2005 and till the disqualification order was stayed are deliberate and designed undoubtedly. However, we are satisfied that taking into consideration his age of 75 years plus he does not deserve to be punished with simple imprisonment and instead it would be appropriate that he is punished with fine.

6. In the result, we allow this petition and hold the respondent no.1 guilty of contempt of Court within the meaning of Section 2(c) of the Act and

punish him with fine of Rs.2000/- and the fine amount shall be deposited within a period of two weeks from today, failing which he shall undergo simple imprisonment for one week.

(NARESH H. PATIL,J.) (B.H.MARLAPALLE,J.)